

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

FILED

2004 MAY 25 A 10: 53

In re:

JOHN M. ARNOLD

Debtor

) Chapter 11 Case
) No. 01-13344-JMD

) HEARING DATE:
) June 16, 2004 at 11:00 a.m.

**(HEARING CONTINGENT UPON
OBJECTIONS BEING FILED)**

CLERK OF THE
BANKRUPTCY COURT
DISTRICT OF NH

**MOTION FOR ORDER AUTHORIZING AND APPROVING
PRIVATE SALE OF PROPERTY OF THE ESTATE
(1 Lot on Duck Walk Way, Hogansville GA)**

John M. Arnold, debtor in possession in the above-captioned case ("Debtor"), pursuant to 11 U.S.C. §363, Fed.R.Bankr.P. 2002(a)(2) and 6004, and LBR 6004-1, hereby requests authority to sell certain property of the estate free and clear of any and all liens, claims and other interests, except as otherwise provided herein, and to exempt said sale from any stamp, transfer, recording or similar tax, and in support hereof states as follows:

- (1) This case was commenced by the filing of a voluntary Chapter 11 petition on November 2, 2001. The Debtor has continued in possession of his assets as a debtor in possession pursuant to 11 U.S.C. §§1101, 1107 and 1108.
- (2) The Debtor has entered into an Agreement For Sale ("Agreement") to sell his interest in the real property known as and located at Duck Walk Way, Hogansville GA, as more fully described in the Agreement ("Property"), to TowneCenter Development Group, LLC ("Buyer") for a gross purchase price of \$71,000.00. A copy of the Agreement is attached hereto and incorporated herein as Exhibit A.
- (3) The Property consists of an undeveloped lot of approximately 30,000 square feet. It has been marketed by the Debtor for about six months and the Debtor has received

no other offer for the Property. The Debtor estimates its present fair market value at no more than \$71,000 based on the Debtor's knowledge of and experience with the surrounding market. (Mr. Arnold has been a residential developer in the market where the Property is located.) The only other lot sale on Duck Walk Way was for \$35,000. The subject lot has water problems and still requires municipal permitting before it can be developed.

- (4) The Debtor believes that the Agreement is in the best interests of the creditors and the estate. There is no insider or affiliate or other relationship between the Debtor and the Buyer. The purchase price was negotiated at arms length and represents at least the fair market value of the Property according to the Debtor's estimate. There is no broker's commission to be paid for the sale. Finally, the Agreement has no financing or other contingency.
- (5) No prejudice results from the sale being free and clear of all liens, claims and other interests as they shall attach to any proceeds of sale remaining AFTER paying at the closing, in the following order, to the extent of such proceeds, (a) all allowed secured claims for municipal charges against the Property (estimated to be about \$2,000); (b) any applicable closing costs customarily paid by the seller; and (c) the mortgage claim of Centex Home Equity Company, LLC ("Centex"), estimated to be in the amount of about \$700,000. Pursuant to the Debtor's agreement with Centex, the foregoing proceeds of sale of the Property payable to Centex will be applied to the amount needed to cure the Debtor's arrearage under Centex' mortgage note. While the foregoing payment to Centex will exhaust the sale proceeds, the payment to Centex will increase the amount of equity in Centex'

other collateral, the Debtor's residential property, for the benefit of the Debtor's unsecured creditors.¹ By this Motion, the Debtor seeks authority and approval to pay at the closing on the sale the foregoing items (a), (b) and (c).

- (6) Based on the foregoing, the Debtor submits that the proposed sale is in the best interests of the estate as it realizes the fair market value for the Property, reduces the mortgage claim against other property of the estate, and reduces the Debtor's administrative expenses for carrying the Property.
- (7) Bankruptcy Code §1146(c) provides that "the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title may not be taxed under any law imposing a stamp or similar tax." This language has been construed to include transfers pursuant to a sale outside of, but in furtherance of, effectuating a reorganization plan. See, e.g., In re Jacoby-Bender, Inc., 758 F.2d 840, 842 (2d Cir. 1985). The Debtors are seeking Court approval of the subject sale to reduce their secured indebtedness and their operating expenses and thereby facilitate the formulation and ultimate confirmation of a reorganization plan that will yield the highest and earliest possible return to the Debtors' creditors. In light of the foregoing, the Debtors submit that the proposed sale is a necessary step toward a reorganization plan and should be exempt from stamp tax or similar taxes under 11 U.S.C. §1146(c).

¹ The pending Amended Plan of Reorganization Dated February 19, 2004 prohibits the Debtor from selling, hypothecating or encumbering his interest in any property until payment of said claims in full with interest.

(8) Requisite notice of the sale shall be in the form of notice attached hereto as Exhibit B, served on all parties entitled to notice pursuant to the Federal Rules of Bankruptcy Procedure.

WHEREFORE, John M. Arnold respectfully requests entry of an order in the form appended hereto authorizing and approving the sale of the Property free and clear of all liens, claims and other interests, except as provided herein, and exempt from any stamp tax or similar tax, all as described herein, and such other and further relief as justice may require.

Respectfully submitted,

JOHN M. ARNOLD

By his counsel,

A handwritten signature in black ink, appearing to read 'John F. Davis', written over a horizontal line.

John F. Davis
P.O. Box 361
Manchester MA 01944
(978)525-3434

Date: 5/21/04

AGREEMENT FOR SALE OF PROPERTY

THIS AGREEMENT, entered into as of the 8th day of April, 2004 by and between John M. Arnold (hereinafter referred to as the "Seller"), and TowneCenter Development Group, LLC. (hereinafter referred to as the "Purchaser");

WITNESSETH:

For and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1) Purchase And Sale Of Real Estate

Upon the terms and provisions hereinafter set forth, Seller agrees sell and Purchaser agrees to purchase that tract or parcel of land shown as "Subject" on a modified version of the Final Plat for Mallard's Lake S/D and being more particularly described as a parcel beginning at an iron pin located at the southeast corner of lot 39 of the Mallard's Lake S/D as recorded in Deed Book 20D pages 74-79, and running thence in a northeasterly direction 02 degrees, 32 minutes, 47 seconds a distance of 106.40 feet to the designated point of beginning, thence northwesterly along Duck Walk Way 87 degrees, 27 minutes, and 13 seconds a distance of 78 feet; thence southwesterly 0.02 degrees, 32 minutes, 47 seconds a distance of 215 feet; thence parallel to Duck Walk Way in southwesterly direction 87 degrees, 27 minutes, 13 seconds to the boundary of John Hardy Jones; thence northeasterly along the boundary of John Hardy Jones to an iron pin at the southeast corner of lot 39 Mallard's Lake S/D. The Subject tract is located in the City of Hogansville, Georgia lying and being in land lot 97 of the 11th Land District of Troup County Georgia (with said tract or parcel of land being hereinafter referred to as the "Property").

2) Purchase Price

- a) The purchase price ("Purchase Price") for the Property to be paid by Purchaser to Seller at the full and complete execution of the Warranty Deed to the Property referred herein shall be the sum of **Seventy-one Thousand (\$71,000.00) Dollars**, ("Purchase Price"). The Purchase Price shall be payable at Execution of the Warranty Deed with all necessary approvals, decrees and orders by the US Bankruptcy Court.

3) Seller. John M. Arnold

4) Purchaser. TowneCenter Development Group, LLC

5) Execution And Transfer Date

The transaction shall be fully consummated with Warranty Deed executed and Purchase Price remitted on or before 10 business days from the date of the Purchaser receiving an order/decreed from the US Bankruptcy Court that this Purchase Agreement is signed by all parties, hereinafter referred to as the "Execution Date".

6) Title. Subject to US Bankruptcy Court approval, the Seller represents and warrants he currently has good and marketable, indefeasible, fee simple title, subject to a mortgage held by Centex Home Equity which is required by Purchaser to be released by decree from US Bankruptcy Court and Quit Claim from mortgagee, and subject to no other claims, encumbrances or easements and will convey the same to Purchaser at Execution.

7) Delivery of Information. ~~Seller shall provide to Purchaser all information, to the extent that it is available, requested by Purchaser concerning the Properties, it's physical condition and business operations thereon, including, but not limited to, the following:~~

- ~~(1) If available, copies of existing surveys, title abstracts, opinions, binders and policies and copies of all matters of record;~~

8) Miscellaneous.

- a) On the day of execution, Purchaser shall have the opportunity to examine title and to give notice of title objections which, if not cured, shall give Purchaser the right to waive such objections or terminate the agreement.
- b) Seller shall convey and transfer good and marketable, indefeasible title by Warranty Deed, such that Purchaser's title insurance company will issue its full coverage standard revised ALTA Owner's Policy of Title Insurance Form B in the amount of the purchase price without exception.
- c) Real estate taxes and assessments will be paid by Seller.

- d) Default by Seller shall provide Purchaser with all remedies at law or equity, including specific performance.
 - e) All parties agree that the provisions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors, representatives, heirs and assigns
 - f) During the term of this agreement, Seller agrees not to further encumber the Properties, agree to any lease agreement, sales agreement or easement with respect to the Property, shall not transfer or remove, for value or otherwise, any Personal Properties and shall otherwise maintain the Properties in the condition as it is presently.
- 9) Notices. All notices required hereunder shall be deemed given if given in writing and sent by hand delivery or by overnight delivery service (such as Federal Express) with all delivery charges paid by the sender and addressed to Purchaser or Seller as applicable with notice being deemed given on the date of actual delivery:
- i) if to Seller: John M. Arnold 414 Donald Street, Bedford, NH 03110.
 - ii) if to Purchaser: TowneCenter Development Group, LLC, 1600 Masters Club Drive, Atlanta, GA 30350.
- 10) Time. Time is of essence of this Agreement.
- 11) Possession. Full and Complete Possession of the Property shall be granted by Seller to Purchaser at Execution and Transfer.

The date of this Agreement shall be the date this Agreement was signed by the last party to sign, which date shall be deemed the "Date of Acceptance" hereof.

IN WITNESS WHEREOF, Purchaser and Seller have hereunto set their hands and seals as of the date indicated below.

As to Seller:

John M. Arnold

As to Purchaser:

TowneCenter Development Group, LLC


Gary W. Kuch, Managing Member

